



**Inadmissible Offer of Compromise  
Subject to Federal Rule of Evidence 408**

August 24, 2001

**VIA OVERNIGHT DELIVERY**

Deena Sheppard-Johnson  
Enforcement Specialist  
U.S. Environmental Protection Agency  
Remedial Enforcement Support Section  
77 West Jackson Boulevard (SR-6J)  
Chicago, Illinois 60604-3590

**Re: Good Faith Offer Pertaining to the Chemical Recovery Systems, Inc. Site in Elyria, Ohio**

Dear Ms. Sheppard-Johnson:

This letter constitutes a good faith offer ("GFO") submitted on behalf of the parties listed in Exhibit A ("Respondents") to undertake or finance studies and investigations for the Chemical Recovery Systems, Inc. Site at 142 Locust Street, Elyria, Ohio ("the Site"). Each Respondent has received correspondence that purports to be a Special Notice Letter from U.S. EPA pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") Section 122(e) identifying it as a potentially responsible party ("PRP") associated with the Site. Under CERCLA § 122(e), a Special Notice Letter commences a 90-day period during which PRPs may negotiate with U.S. EPA for the opportunity to conduct the necessary studies and investigations at the Site. These negotiations have commenced and they are scheduled to continue. Nothing herein should be construed as an admission by any Respondent of liability or responsibility for any costs or actions associated with the Site.

CERCLA § 122(e) requires that the PRPs submit within 60 days of receipt of the Special Notice letter a proposal to undertake or finance the studies and investigations at the Site. This GFO letter submitted on or before August 25, 2001 meets any obligation that Respondents may have under CERCLA § 122(e) for making such a proposal. At minimum, Respondents and U.S. EPA have the benefit of the full 90-day negotiation moratorium (until September 24, 2001) to reach agreement on the scope of the studies and investigations at the Site and whether U.S. EPA will agree to allow Respondents to conduct or finance these activities.

Respondents are willing to conduct or finance studies and investigations at the Site subject to and in accordance with a negotiated statement of work ("SOW") and administrative consent order containing reasonably acceptable terms. To facilitate these negotiations, Respondents are meeting on or about

August 27, 2001 to formalize a group structure and appoint the person(s) responsible for representing the interests of the PRP Group members in negotiations with U.S. EPA. This meeting is the culmination of a series of meetings and communications among PRPs to lay the groundwork for an organization that can work efficiently and effectively to finance or conduct tasks in the SOW. Until notified differently, communications with the Respondents should be made through Geoffrey Barnes at Squire, Sanders & Dempsey L.L.P. (216.479.8646) at the address listed above.

The Respondents have the technical and financial capability to undertake studies and investigations at the Site. A brief review of just the publicly traded companies on the list of Respondents should remove any doubt that Respondents have the financial capability to undertake the necessary studies and investigations at the Site. The list of Respondents includes three of the four largest companies on the Fortune 500 list with combined revenues of over \$500 billion. While many of the Respondents have the capability to finance the studies and investigations, Respondents are working on an interim cost sharing arrangement to maximize PRP participation.

Respondents also have significant technical experience in the area of environmental studies and site investigations. Many Respondents have technical representatives with substantial CERCLA and RCRA site investigation experience. The ad hoc technical committee includes representatives from Exxon-Mobil, General Motors, Goodyear, PPG Industries, and Ashland Chemical, who have worked on many site investigations and field studies. The ad hoc technical committee has also identified a short list of qualified remediation contractors who will be invited to bid on performing the studies and investigations at the Site under the capable supervision of the technical committee and the steering committee members.

The Special Notice Letter invites Respondents to provide a paragraph-by-paragraph response to U.S. EPA's Statement of Work and Draft Administrative Order. This level of detail is best addressed through face-to-face negotiations. As such, Respondents request an opportunity to meet with U.S. EPA technical and legal representatives to discuss these documents at your earliest convenience. Further, the majority of paragraphs contain model language that will not require much discussion or negotiation. Therefore, we prefer to use this opportunity to identify some of the key issues for which Respondents request further clarification and discussion including the following:

- The Statement of Work includes an investigation of the "segment of the East Branch of the Black River adjacent to Chemical Recovery Systems, Inc." The 1999 ATSDR Health Consultation concludes that surface water and sediment are not pathways of concern, and that "U.S. EPA shall continue its investigations as to the source and extent of the continued **groundwater** contamination at the CRS Site." Respondents are interested in discussing U.S. EPA's justification for including the Black River within the scope of the Site investigation.

- The Statement of Work also includes gathering data in consultation with Trustees to enable natural resource damage assessment activities. The entities asserting Trustee status and the natural resources allegedly affected are not identified. Please identify all entities that are considering asserting Trustee status and the natural resources involved. Respondents are interested in reviewing the Trustees' Pre-Assessment Screen and their Assessment Plan so that we can properly evaluate the scope of these NRD-related activities.
- It is unclear how the baseline risk assessment is to be used in the process. The SOW does not indicate if EPA, Ohio EPA, or the Respondents will prepare the baseline risk assessment, or how it will be used to develop preliminary remediation goals and assist in defining the extent of contamination. The Respondents would prefer to conduct the baseline risk assessment based on site-specific conditions as well as future land use considerations. Furthermore, the risk assessment should be used in the investigation to identify target constituents of concern to focus remedial efforts.

Respondents understand that U.S. EPA is trying out a new streamlined approach to managing this Site without going through the formal process of listing the Site on CERCLA's National Priorities List. Respondents are very interested in working with U.S. EPA to support this new approach and to discuss additional ways to improve the efficiency and effectiveness of the remedial investigation and feasibility study process at this Site. Respondents have experience with the standard RI/FS process incorporated into the Draft Administrative Order and the Statement of Work, and we are prepared to discuss discrete improvements to this process that will continue to meet all of the necessary elements of the National Contingency Plan.

Respondents recognize U.S. EPA's authority to recover certain costs that it may incur overseeing RI/FS work at the Site from parties liable under CERCLA § 107(a). Respondents request that U.S. EPA forgive all oversight costs in accordance with the U.S. EPA's Interim Guidance on Orphan Share Compensation for Settlers of Remedial Design/Remedial Action and Non-Time Critical Removals. The orphan share attributable to non-viable PRPs will be significant at this Site. U.S. EPA reports that the shares attributable to the primary owner/operators (Chemical Recovery Systems, Inc. and Obitts Chemical) and many of the other PRPs will likely be unrecoverable orphan shares. Under EPA's Orphan Share Policy oversight costs may be forgiven to reduce the burden on performing PRPs to cover the quantifiable shares attributable to insolvent and defunct PRPs. Respondents request the opportunity to demonstrate that orphan shares at this Site will far exceed U.S. EPA's oversight costs. Therefore, U.S. EPA costs should be forgiven or pursued from PRPs who refuse to participate in the work at the Site.

Deena Sheppard-Johnson  
August 24, 2001  
Page 4

We understand that USEPA has recently sent information requests and notice letters to a number of additional parties. We appreciate U.S. EPA's efforts to notify all potentially responsible parties of their obligations at this Site. However, in order to give these newly noticed parties adequate time to make an informed decision about participating in this PRP Group, we will need additional time to formalize our group structure. We propose a meeting on or about September 6, 2001 to discuss the draft Administrative Order and the Statement of Work. We appreciate the opportunity to work with U.S. EPA on an effective and efficient approach to completing the necessary studies and investigations at the Site.

Sincerely,

Geoffrey K. Barnes  
Douglas A. McWilliams  
Squire, Sanders & Dempsey L.L.P.  
On behalf of Respondents

Enclosure

Copy: Thomas C. Nash, Associate Regional Counsel, U.S. EPA  
Gwendolyn Massenburg, Remedial Project Manager, U.S. EPA  
Lawrence Antonelli, Ohio EPA  
Appendix A Respondents